

**Caution:**

*This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.*

**CONSULTATION DRAFT**

**ONTARIO REGULATION**

To be made under the

**PENSION BENEFITS ACT**

Amending O. Reg. 310/13

(ASSET TRANSFERS UNDER SECTIONS 80 AND 81 OF THE ACT)

**1. Subsection 2 (2) of Ontario Regulation 310/13 is amended by adding the following definition:**

“Target Benefits Regulation” means Ontario Regulation [**O. Reg. # for new target benefits regulation**] (Target Benefits) made under the Act; (“règlement sur les prestations cibles”)

**2. Subsection 6 (1) of the Regulation is amended by adding the following paragraph:**

4. For a transfer of assets in respect of target benefits, an actuarial cost certificate that satisfies the requirements of subsection 7.1 (1) of the General Regulation and contains the following information:
  - i. An estimate of the normal cost of the plan for the fiscal year commencing on the valuation date of the certificate.
  - ii. An estimate of the amount equal to the provision for adverse deviations in respect of the normal cost for the plan for that fiscal year.
  - iii. An estimate of the total contributions to the plan to be paid in respect of that fiscal year.
  - iv. The pension plan’s going concern assets and estimated going concern liabilities, each determined as of the valuation date of the certificate.

- v. The amount of assets transferred from the original pension plan to the successor pension plan.

**3. Subsection 7 (1.1) of the Regulation is revoked.**

**4. The Regulation is amended by adding the following Part:**

**PART IV  
TRANSFER OF TARGET BENEFITS**

APPLICATION

**Application of Part**

**24.** This Part applies with respect to a transfer of assets under section 81 of the Act if both the original pension plan and the successor pension plan provide target benefits and if the transfer of assets is in respect of target benefits.

FUNDING REQUIREMENTS

**Amount of assets to be transferred**

**25.** (1) The amount of assets to be transferred under section 81 of the Act from the original pension plan to the successor pension plan with respect to target benefits is the amount calculated using the formula,

$$(X + Y) - Z$$

in which,

“X” is the amount calculated under subsection (2),

“Y” is the amount calculated under subsection (3), and

“Z” is the amount described in subsection (4).

(2) In the formula in subsection (1), “X” is the amount calculated as of the effective date of the transfer using the formula,

$$(A \times B/C) - D$$

in which,

“A” is the sum of the total amount of the solvency assets of the original pension plan,

- “B” is the total amount of the going concern liabilities to be transferred from the original pension plan to the successor pension plan,
- “C” is the total amount of the going concern liabilities of the original pension plan before the transfer of assets, and
- “D” is the total amount to be paid into prescribed retirement savings arrangements under subsection 79.2 (8) of the Act and paid to individuals under subsection 79.2 (9) of the Act to satisfy the criteria set out in paragraph 2 of subsection 81 (6) of the Act.

(3) In the formula in subsection (1), “Y” is the amount calculated using the formula,

$$E \times B/C$$

in which,

- “B” has the same meaning as in subsection (2),
- “C” has the same meaning as in subsection (2), and
- “E” is the amount of special payments made into the original pension plan from the effective date of the transfer of assets to the date on which the assets are transferred.

(4) In the formula in subsection (1), “Z” is the amount of payments made, on or after the effective date of the transfer of assets to the date on which the assets are transferred, under the original pension plan in respect of members, former members, retired members or other persons entitled to benefits who, as of the effective date of the transfer of assets, are transferred members, former members, retired members or other persons entitled to benefits under the successor pension plan.

### **Requirements re funded position**

**26.** (1) A transfer of assets under section 81 of the Act with respect to target benefits is not authorized unless, after the transfer, all of the following conditions would be satisfied:

1. The going concern funded ratio of the successor pension plan is not less than the lesser of,
  - i. the going concern funded ratio of the successor pension plan before the transfer, and
  - ii. the sum of 1 and the provision for adverse deviations, determined under section 15 of the Target Benefits Regulation, of the successor pension plan before the transfer.

2. The going concern funded ratio of the successor pension plan is not less than the lesser of,
  - i. 95 per cent of the going concern funded ratio of the original pension plan before the transfer, and
  - ii. the sum of 1 and the provision for adverse deviations, determined under section 15 of the Target Benefits Regulation, of the original pension plan before the transfer.

(2) For the purposes of subsection (1), the going concern funded ratio of the successor pension plan before the transfer must be calculated using the same actuarial methods and assumptions as those used to calculate the going concern funded ratio of the successor pension plan after the transfer.

### **Special payments**

**27.** (1) If a transfer of assets under section 81 of the Act results in a new going concern unfunded liability, special payments to liquidate the new going concern unfunded liability must be made in accordance with section 12 of the Target Benefits Regulation.

(2) The obligation of an employer to make special payments under the original pension plan continues until the transfer of assets is completed.

### **Certain reports under General Regulation**

**28.** (1) This section applies with respect to a report filed under section 3 or 14 of the General Regulation about the original pension plan or the successor pension plan, if the valuation date for the report falls after the effective date of the transfer but before the date on which the Chief Executive Officer consents to the transfer and the assets are transferred to the successor pension plan.

(2) The report must disclose, on the basis of a going concern valuation, the amount of the assets and liabilities to be transferred to the successor pension plan with respect to the transferred members, former members, retired members and any other persons whose pension benefits and ancillary benefits are being transferred to the successor pension plan.

## **RESTRICTIONS ON TRANSFERS**

### **Requirement re accrued pension benefits**

**29.** The amount of a transferred member's accrued pension benefits under the successor pension plan (calculated without taking into account ancillary benefits) must equal at least the amount of their accrued pension benefits under the original pension plan (calculated without taking into account ancillary benefits) as of the effective date of the transfer.

### **Deadline for transferring assets**

**30.** A transfer of assets must be completed within 120 days after the date on which the Chief Executive Officer consents to the transfer.

## **NOTICES TO TRANSFERRED MEMBERS AND OTHERS**

### **Standard notices about a transfer of assets**

**31.** (1) This section applies with respect to a transfer of assets under section 81 of the Act with respect to target benefits provided under the original pension plan.

(2) The notices required by this section must be given within six months after the effective date of the transfer.

(3) The following notices must be given to transferred members, former members, retired members and other persons entitled to benefits under the pension plan, as indicated:

1. The standard notice from the administrator of the original pension plan to each transferred member, containing the information required by Schedule 3.
2. The standard notice from the administrator of the successor pension plan to each transferred member, containing the information required by Schedule 4.
3. The standard notice from the administrator of the successor pension plan to each transferred former member, retired member and other person entitled to benefits under the pension plan, containing the information required by Schedule 5.

(4) The following notices must be given to each trade union that represents members, former members and retired members and to each advisory committee established under section 24 of the Act:

1. The standard notice from the administrator of the original pension plan, containing the information required by Schedule 6.
2. The standard notice from the administrator of the successor pension plan, containing the information required by Schedule 7.

(5) After a notice required by subsection (4) is delivered to the trade union or advisory committee, if there is a substantial change in any information contained in the notice, the administrator must give an updated notice to the trade union or advisory committee within a reasonable time after the administrator becomes aware of the change.

(6) The notices required by this section may be provided separately or jointly by the administrators of the original pension plan and the successor pension plan.

## REQUIREMENTS RE PAYMENTS TO OR FOR INDIVIDUALS

### **Payments under s. 79.2 (8) and (9) of the Act**

**32.** (1) Subsections 21 (1.1) to (1.3) of the General Regulation apply, with necessary modifications, with respect to a payment into a prescribed retirement savings arrangement under subsection 79.2 (8) of the Act.

(2) Section 22.2 of the General Regulation applies, with necessary modifications, with respect to a payment to an individual under subsection 79.2 (9) of the Act.

### **5. Schedule 2 to the Regulation is amended by adding the following section:**

#### TARGET BENEFITS

3. (1) The following information must, under section 5 of this Regulation, be included in an application for the Chief Executive Officer's consent to a transfer of assets under section 81 of the Act with respect to target benefits provided under the original pension plan:

1. Certified copies of the notices sent to transferred members and, if applicable, to former members, retired members and other persons entitled to benefits under the pension plan, the notice sent to any trade union and the notice sent to any advisory committee, and a statement indicating the date on which the notices were sent.
2. Any amendments to the original pension plan or the successor pension plan relating to the transfer of assets.
3. Subject to subsection (2), a report about the original pension plan, prepared as of the effective date of the transfer of assets, containing the information that would be required in a report filed under section 14 of the General Regulation as well as the following information:
  - i. The portion of the going concern liabilities that relate to the pension benefits and ancillary benefits for which responsibility is to be transferred to the successor pension plan.
  - ii. The amount of the going concern liabilities, going concern assets, provision for adverse deviations and going concern funded ratio of the original pension plan before and after the proposed transfer.
  - iii. The amount of the required contributions to the original pension plan before and after the proposed transfer.
  - iv. The amount of the assets to be transferred from the original pension plan to the successor pension plan.

- v. The total amount, if any, to be paid under subsection 79.2 (8) of the Act into prescribed retirement savings arrangements and to be paid under subsection 79.2 (9) of the Act as lump sums to individuals.

The report must be prepared by a person who would be authorized under section 15 of the General Regulation to prepare a report under section 14 of the General Regulation about the pension plan.

- 4. A report about the successor pension plan, prepared as of the effective date of the transfer of assets, containing the information that would be required in a report filed under section 14 of the General Regulation, to the extent applicable in the circumstances, as well as the following information:
  - i. The portion of the going concern liabilities that relate to the pension benefits and ancillary benefits to be provided by the successor pension plan after the successor pension plan has been amended in accordance with clause 79.2 (11) (b) of the Act.
  - ii. The following amounts:
    - A. The going concern liabilities of the successor pension plan before and after the proposed transfer.
    - B. The going concern assets of the successor pension plan before and after the proposed transfer.
    - C. The provision for adverse deviations in respect of going concern liabilities of the successor pension plan before and after the proposed transfer.
  - iii. The going concern funded ratio of the successor pension plan before and after the proposed transfer.
  - iv. The amount of the required contributions to the successor pension plan before and after the proposed transfer.
  - v. The amount of the assets to be transferred from the original pension plan to the successor pension plan.

The report must be prepared by a person who would be authorized under section 15 of the General Regulation to prepare a report under section 14 of the General Regulation about the pension plan.

5. A statement by the administrator of the original pension plan certifying that the original pension plan satisfies the requirements of the Act and regulations relating to the proposed transfer.
6. A statement by the administrator of the successor pension plan certifying that the successor pension plan satisfies the requirements of the Act and regulations relating to the proposed transfer.

(2) The successor plan's report referred to in paragraph 4 of subsection (1) must use the same methods and actuarial assumptions that were used in that plan's last filed valuation report.

**6. Schedule 3 to the Regulation is amended by adding the following section:**

TARGET BENEFITS

3. The standard notice to be given under subsection 31 (3) of this Regulation to a transferred member by the administrator of the original pension plan with respect to target benefits provided under the original pension plan must contain the following information:

1. The information that is required by [reference to annual member statements in respect of target benefits] , with necessary modifications, determined as of the effective date of the transfer of assets.
2. Information about any payment to be made into a prescribed savings arrangement on behalf of the transferred member under subsection 79.2 (8) of the Act, including any deadlines.
3. Information about any payment to be made to which the transferred member may be entitled under subsection 79.2 (9) of the Act, including any applicable deadlines for providing information to the administrator.
4. Information about how to obtain copies of any documents filed with the Chief Executive Officer with respect to the transfer of assets from the original pension plan to the successor pension plan.
5. A statement that the documents filed with the Chief Executive Officer are available for inspection at the premises of the original employer and the successor employer or at a location that is agreed upon by the administrator and the person making the request.
6. A statement that personal information about an individual is not available for inspection at the premises of the original employer or the successor employer, or at a location that is agreed upon by the administrator and the person making the request, unless the individual's prior consent is obtained.



**7. Schedule 4 to the Regulation is amended by adding the following section:**

TARGET BENEFITS

3. The standard notice to be given under subsection 31 (3) of this Regulation to a transferred member by the administrator of the successor pension plan with respect to target benefits provided under the original pension plan must contain the following information:

1. The name of the successor pension plan and its provincial registration number.
2. A description of the differences, if any, in the pension benefits and ancillary benefits provided under the original pension plan and under the successor pension plan.
3. A statement that the successor pension plan is permitted under the Act to reduce accrued pension benefits and accrued ancillary benefits in accordance with the terms of the plan, including the plan's funding and benefits policy.
4. A description of the circumstances that could lead to a reduction of benefits in the successor plan.
5. The number of years of service or membership that will be credited to the transferred member under the successor pension plan.
6. A description of the differences, if any, in the rate of contributions payable by the transferred member under the original pension plan and under the successor pension plan.
7. The going concern funded ratio of the successor pension plan as of the valuation date of each of the two reports filed most recently under sections 13 and 14 of the General Regulation or, if the plan is a new pension plan, the going concern funded ratio as of the valuation date of the report to be included in the application for the Chief Executive Officer's consent to the transfer.
8. An explanation of the going concern funded ratio and how it relates to the level of funding of the transferred members' benefits.

**8. Schedule 5 to the Regulation is amended by adding the following section:**

TARGET BENEFITS

3. The standard notice to be given under subsection 31 (3) of this Regulation to a transferred former member, retired member or other person entitled to benefits under the successor pension plan by the administrator of the successor pension plan with respect to target benefits under the original pension plan must contain the following information:

1. The individual's name and date of birth.
2. The name of the original pension plan and its provincial registration number.
3. The name of the successor pension plan and its provincial registration number.
4. The effective date of the transfer of assets from the original pension plan to the successor pension plan.
5. If the individual is a former member,
  - i. their normal retirement date and the annual amount of the pension that would be payable at that date,
  - ii. the earliest date on which they would be eligible to receive an unreduced pension under the successor pension plan, and the amount of the pension that would be payable at that date, with a statement that an unreduced pension, while not reduced because of early retirement, can still be reduced in accordance with the terms of the plan, including the plan's funding and benefits policy,
  - iii. a description of any indexation provisions applicable to the pension,
  - iv. particulars of any bridging benefit or special allowance and the date on which it ceases to be paid,
  - v. particulars of any benefit payable in the event of the former member's death, and
  - vi. the name of their spouse, if applicable, and of any beneficiary indicated in the records of the administrator.
6. If the individual is a retired member or if the individual is receiving a pension under the original pension plan but is not a retired member,
  - i. the annual amount of the pension payable to them under the successor pension plan,
  - ii. a description of any indexation provisions applicable to the pension,
  - iii. particulars of any benefit payable in the event of the retired member's death, and

- iv. the name of their spouse, if applicable, and of any beneficiary indicated in the records of the administrator.
- 7. A statement that the pension benefits and ancillary benefits provided under the successor pension plan are not less than those provided under the original pension plan.
- 8. A description of the differences, if any, in the pension benefits and ancillary benefits provided under the original pension plan and under the successor pension plan.
- 9. A statement that the successor pension plan is permitted under the Act to reduce accrued pension benefits and accrued ancillary benefits in accordance with the terms of the plan, including the plan's funding and benefits policy.
- 10. A description of the circumstances that could lead to a reduction of benefits in the successor plan.
- 11. The going concern funded ratio of the successor pension plan as of the valuation date of each of the two reports filed most recently under sections 13 and 14 of the General Regulation or, if the plan is a new pension plan, the going concern funded ratio as of the valuation date of the report to be included in the application for the Chief Executive Officer's consent to the transfer.
- 12. An explanation of the going concern funded ratio and how it relates to the level of funding of benefits.
- 13. Information about how to obtain copies of any documents filed with the Chief Executive Officer with respect to the transfer of assets from the original pension plan to the successor pension plan.
- 14. A statement that the documents filed with the Chief Executive Officer are available for inspection at the premises of the original employer and the successor employer or at a location that is agreed upon by the administrator and the person making the request.
- 15. A statement that personal information about an individual is not available for inspection at the premises of the original employer or the successor employer, or at a location that is agreed upon by the administrator and the person making the request, unless the individual's prior consent is obtained.

**9. Schedule 6 to the Regulation is amended by adding the following section:**

### TARGET BENEFITS

3. The standard notice to be given under subsection 31 (4) of this Regulation by the administrator of the original pension plan to a trade union or to an advisory committee with respect to target benefits under the original pension plan must contain the following information:

1. The name of the original pension plan and its provincial registration number.
2. A description of the differences, if any, in the rate of contributions payable by transferred members under the original pension plan and under the successor pension plan.
3. A description of the differences, if any, in the pension benefits and ancillary benefits provided under the original pension plan and under the successor pension plan.
4. A statement that the successor pension plan is permitted under the Act to reduce accrued pension benefits and accrued ancillary benefits in accordance with the terms of the plan, including the plan's funding and benefits policy.
5. A description of the circumstances that could lead to a reduction of benefits in the successor plan.
6. The going concern funded ratio of the original pension plan before and after the transfer.
7. In a notice given to a trade union, the number of transferred members who are members of the trade union and a list of their names.

### **10. Schedule 7 to the Regulation is amended by adding the following section:**

### TARGET BENEFITS

3. The standard notice to be given under subsection 31 (4) of this Regulation by the administrator of the successor pension plan to a trade union or to an advisory committee with respect to target benefits under the original pension plan must contain the following information:

1. The name of the successor pension plan and its provincial registration number.
2. A description of the differences, if any, in the rate of contributions payable by transferred members under the original pension plan and under the successor pension plan.
3. A description of the differences, if any, in the pension benefits and ancillary benefits provided under the original pension plan and under the successor pension plan.

4. A statement that the successor pension plan is permitted under the Act to reduce accrued pension benefits and accrued ancillary benefits in accordance with the terms of the plan, including the plan's funding and benefits policy.
5. A description of the circumstances that could lead to a reduction of benefits in the successor plan.
6. A description of the accrued pension benefits and accrued ancillary benefits to be provided by the successor plan after the successor pension plan has been amended in accordance with clause 79.2 (11) (b) of the Act.
7. The going concern funded ratio of the successor pension plan before and after the transfer.
8. A description of the changes, if any, to the benefits of transferred members as a result of the transfer.
9. In a notice given to a trade union, the number of transferred members who are members of the trade union and the list of their names.

**Commencement****11. [Commencement]**